

SECOND JUDICIAL DISTRICT - OGDEN DISTRICT COURT

WEBER COUNTY, STATE OF UTAH

MOLLY J. MULLIGAN, et al.,

Plaintiffs,

v.

ALUM ROCK RIVERSIDE LLC, et al,

Defendants.

)
) Case No. 240908957
)
)
) TRANSCRIPT OF:
) PRELIMINARY INJUNCTION
)
)
)
)
)
)

BEFORE THE HONORABLE NOEL S. HYDE

OGDEN DISTRICT COURT
2525 GRANT AVENUE
COURTROOM #3C
OGDEN, UTAH 84401

JANUARY 14, 2025

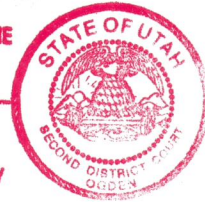
STATE OF UTAH }
COUNTY OF WEBER } SS.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 12TH DAY OF March 20 25

CLERK OF THE COURT

BY Monica Heslop DEPUTY



A P P E A R A N C E S

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P R O C E E D I N G S

THE COURT: All right. We are on the record in
Mulligan versus Alum Rock. Cases 240908957.

Counsel, please note your appearances.

MR. TILT: Bradley Tilt, Your Honor, for the
Mulligans.

THE COURT: Thank you.

MR. JOHNSON: Ben Johnson for Alum Rock Riverside.

THE COURT: Thank you, counsel.

This is the time set to consider a request for a
preliminary injunction. A temporary restraining order
previously issued based upon the request of the plaintiffs in
this case. And I will hear the argument on the preliminary
injunction request.

MR. TILT: Your Honor, may I approach the bench?

THE COURT: Please. Thank you.

MR. TILT: I provided the Court a binder of the
exhibits that I anticipate referencing today. I provided a set
to opposing counsel as well. And I do have one witness to
testify on a couple of issues that --

THE COURT: All right.

MR. TILT: -- if that is necessary today.

THE COURT: Do you wish to make an opening before

1 we get started, counsel?

2 MR. TILT: A brief. Yes.

3 THE COURT: Please.

4 MR. TILT: First of all, as a matter of
5 housekeeping on those exhibits, all of them, except for 8 and
6 9, I believe, are certified copies. So I would ask that we can
7 use Rule 902 regarding self-authentication with regard to those
8 items.

9 THE COURT: All right. And we can deal with those
10 when the documents are actually offered. And I'll simply
11 reserve ruling on questions of that nature until the actual
12 matters are before me.

13 MR. TILT: Sure. Okay.

14 What brings us here today, Your Honor, on an
15 expedited hearing basis, is Alum Rock's circumvention of this
16 Court's ruling in the separated but related Single Box case
17 from November 26 of 2024. Case number 210904774.

18 In that case, Your Honor ruled at the end of a
19 hearing on a motion for supplemental pleadings to combine Alum
20 Rock as a party into the Single Box case. Your Honor ruled
21 that the Mulligans could supplement their complaint, could
22 bring Alum Rock into that case, and could litigate whether Alum
23 Rock's judgment lien and writ of execution may not -- and ruled
24 that the judgment lien claimed by Alum Rock and its writ of
25 execution, that is the subject of the foreclosure sale that

1 we're here about today, quote, "May not extend to the interest
2 of a co-settlor in the property."

3 And the Court at that point -- and I'm quoting from
4 the Court's oral ruling. We obtained a written transcript from
5 that. And the Court at that point referenced Footnote 4 from
6 the Supreme Court's ruling in -- or the foot -- Footnote 7 from
7 the Supreme Court's ruling in the Alum Rock case in this
8 matter.

9 The -- the Court went on to say at the end of that
10 hearing, on page 53 of the transcript--and this is part of the
11 materials that have been filed with the court as well--quote,
12 "Therefore, the judgment lien is a lien against the interest
13 originating from Brett Del Valle, not necessarily against
14 anyone else. And the execution, therefore, is also directed to
15 that same limitation," end quote.

16 Mr. Johnson, who is Alum Rock's counsel here today,
17 was present during that hearing. He had filed a motion to
18 intervene asking to be -- for his client and him to be able to
19 participate in that proceeding. He asked for a point of
20 clarification with regard to the Court's ruling during that
21 hearing. He ordered an audio transcript on December 4th of
22 2024 of that ruling.

23 The Mulligans ordered a written transcript of the
24 Court's ruling, because Your Honor may recall it was very
25 detailed and complicated, and -- in order to reduce that to an

1 order, I wanted to have a written transcript so I could get it
2 right.

3 Alum Rock, however -- and that -- the written
4 transcript was filed with the court on December 9th of 2024.

5 On December 18 of 2024, however, Alum Rock took it
6 upon itself to unilaterally proceed to re-notice another
7 foreclosure sale under its same old writ, without any
8 clarification with regard to the scope of what was being
9 foreclosed or not foreclosed.

10 Counsel has attacked myself in the briefing for
11 this matter here, claiming that we are judge shopping and --
12 and trying to get a better result. It's actually the other way
13 around. It's Alum Rock who has decided they didn't like that
14 they were going to have to prove up the -- the contribution
15 interest of Brett to the property, that was the full extent of
16 the lien, judgment lien, and of the writ.

17 And we had no choice, the Mulligans, but to file a
18 new action. Because there was no way to get an order of that
19 detail reduced to writing, get Alum Rock brought in, and then
20 file a motion in -- in the other case, the Single Box case, to
21 get this sale restrained. We therefore had no choice but to
22 file the new case, which is this case here today, to file a
23 motion for injunctive relief.

24 So that is the background that brings us to the --
25 to the proceedings today.

1 And I submit, Your Honor, that the -- it's
2 important to note that we are not, in this case, the Mulligans
3 are not attacking the writ itself. We are not attacking. We
4 understand the Supreme Court has ruled what it ruled, and the
5 writ is what it is. But as Your Honor noted, Footnote 7 said,
6 "But we don't know what that writ attaches to, what that
7 judgment attaches to." And those are the proceedings that are
8 the subject of this case.

9 Counsel has argued that we have a claim preclusion
10 problem with regard to this case. That's flatly false,
11 however. Because as the Supreme Court also very firmly
12 excoriated, myself frankly, in the written opinion from the
13 Alum Rock case, the Alum Rock case was not an action with
14 regard to real property. The Alum Rock case, the Supreme Court
15 very clearly held, was a writ proceeding, and it was not an
16 action involving real property.

17 Therefore, we were limited in the prior case to
18 filing anything attacking the writ, which is what we did. And
19 attacking whether the judgment attached, which we did. Could
20 it attach to the property at all? Statutory compliance with
21 the judgment lien statute.

22 The claims in this case, however, are real property
23 claims. They are an action with regard to real property under
24 the venue statute which provides exclusive jurisdiction to this
25 court, and not to Judge Mow in the Third District Court. The

1 property is located in Weber County. So this is the
2 appropriate forum for this action that is on different and
3 separate issues.

4 We submit that we have provided in the briefing
5 material that will -- that does, in fact, show that we have a
6 substantial likelihood of prevailing on the merits, to show
7 that the governing statute, 75-7-505(1), shows that the lien
8 interest or--or writ of execution interest--that Alum Rock
9 could potentially attach to is only that of the -- to the
10 extent of the contribution of their judgment debtor, Brett Del
11 Valle personally, to the property that was owned and conveyed
12 to the Mulligans by his trust, and not by him personally.
13 75-7-505(1) says they can only attach to Brett's interest, his
14 interest as settlor. Because there are two settlors of the
15 trust, him and his wife.

16 We submit that there's also a substantial
17 likelihood of the Mulligans prevailing on their equitable
18 subrogation claim, because there is no question that they paid
19 off liens that were already of record, and prior to the
20 judgment lien claimed by Alum Rock. And therefore they are,
21 under the equitable subrogation doctrine, placed into the shoes
22 of those judgment creditors, i.e. they are ahead of, and not
23 subject to any lien by Alum Rock.

24 And that is an equitable doctrine to prevent, not
25 only unjust enrichment of Alum Rock by being elevated to a

1 priority position by accident, but also to prevent a loss of
2 the real property by the Mulligans.

3 Utah law is clear and -- and has recognized that,
4 "Real property has always been regarded as unique, because no
5 two parcels are exactly alike," end quote. That's the Utah
6 Department of Transportation versus Jones case cited in the
7 briefing at 694 P.2d page -- 1031, page 1036.

8 So the Mulligans are here to protect their real
9 property interest. They are entitled, as this Court has
10 already ruled, to assert the -- the contribution issue under
11 75-7-505(1). And we submit that they -- that the preliminary
12 injunction ought to issue until this Court can more fully and
13 in a -- a more traditional form litigate the full merits of the
14 underlying claims in this case.

15 THE COURT: Thank you, counsel.

16 MR. JOHNSON: Once again, my apologies for not
17 standing. Counsel had handed me a binder and I didn't hear the
18 clerk's direction, and I was just distracted. So once again,
19 my apologies.

20 We -- we think ultimately Alum Rock, that this is
21 -- this court is simply the wrong court to hear these issues.
22 There is an open and pending matter in the Third District Court
23 where the -- this California -- California judgment was
24 originally domesticated in, and where the writ was issued out
25 of. There is a pending matter right now. And we think,

1 ultimately, the legal issues surrounding the writ should be
2 heard in the Third District Court.

3 A little background. Initially, when the writ was
4 issued, the -- the respondents, the Mulligans, had an
5 opportunity at that point in time to present any legal
6 arguments under the sun as to why my client, Alum Rock, should
7 not be able to proceed with its writ of execution.

8 At that time, the Mulligans raised a number of
9 legal arguments why the writ of execution should not be allowed
10 to proceed, including that the property -- that there was a
11 distinction between the judgment that my client held, which was
12 against Brett Del Valle individually, and the fact that the
13 property was held by Brett Del Valle as trustee.

14 They argued you have a judgment against Brett Del
15 Valle, the property's held in trust, you can't -- you can't
16 proceed on your writ of execution because there's a distinction
17 between Brett Del Valle individually and Brett Dal Valle as
18 trustee. They made that argument.

19 They made arguments that the -- the judgment lien
20 was not properly recorded. It wasn't properly -- that the
21 statutes weren't followed.

22 All the arguments that they're making today could
23 have been raised then. That the Mulligans are BFPs. That they
24 didn't have constructive notice. That they are entitled to
25 equitable subordination or equitable subrogation. All the

1 arguments they are making today could have been made before the
2 Third District Court. And frankly, they should be.

3 And this gets to, I think, the biggest issues are
4 today, are whether this Court is the proper forum for these
5 issues. We cited in our brief to the principle of comity. And
6 we found quite a bit of case law in the federal district court
7 system, when you have one court hearing an issue and then
8 another court gets involved in the same issue.

9 Here's what the federal courts have said. "Federal
10 courts have long recognized that the principle of comity
11 requires federal district courts, courts of (inaudible)
12 jurisdiction and equal rank to exercise care to avoid
13 interference with each other's affairs. When an injunction
14 sought in one federal proceeding would interfere with another
15 federal proceeding, considerations of comity require more than
16 the usual measure of restraint. And such injunctions should be
17 granted only in the most unusual of cases."

18 So what we have here is, the Mulligans asking the
19 Second District Court to enjoin a validly issued writ of
20 execution out of the Third District Court.

21 We think, at the end of the day, this Court should
22 decline jurisdiction, recognize the principle of comity, and
23 refer the Mulligans back to the Third District Court for them
24 to raise the legal arguments they seem to think they have.

25 THE COURT: Okay.

1 MR. JOHNSON: Thank you.

2 THE COURT: Thank you.

3 Reply? Well, those are openings. If there's
4 evidence, counsel, that you wish to present, you can address
5 that now.

6 MR. TILT: Yes, I would like to present evidence,
7 Your Honor.

8 I don't mean to interrupt the Court, but are you
9 waiting for me or --

10 THE COURT: Yep.

11 MR. TILT: -- or am I waiting for you?

12 THE COURT: Yeah.

13 MR. TILT: Okay.

14 THE COURT: If you intend to present evidence --

15 MR. TILT: Okay.

16 THE COURT: -- it is now your opportunity to do so.

17 MR. TILT: I call Blake Heiner to the stand.

18 THE COURT: Blake Heiner, please step forward and
19 be place under oath to testify.

20 (Witness sworn.)

21 THE COURT: Please be seated.

22 THE WITNESS: Thank you.

23 MR. TILT: May I approach the witness, Your Honor?

24 THE COURT: You may.
25

1 BLAKE HEINER

2 called as a witness herein, having been first duly sworn to
3 tell the truth, was examined and testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. TILT:

7 Q Would you please state your full name for the
8 record?

9 A Blake T. Heiner.

10 Q And what do you do for a living?

11 A I am general counsel -- vice president and general
12 counsel for Metro National Title Company in -- based in Salt
13 Lake City.

14 Q Does Metro National Title have anything to do with
15 the real property that's at issue in this case purchased by
16 Molly Mulligan and John P. Mulligan?

17 A Metro National Title issued the owner's policy of
18 title insurance to the Mulligans when they purchased the
19 property. Also acted as escrow closing agent for the
20 transaction.

21 Q Could you please turn to Exhibit 8 in that binder
22 in front of you? Do you recognize that? Or I'm sorry. Ten.
23 Ten in the binder in front of you?

24 A Okay.

25 Q Do you recognize that document?

1 A Yes.

2 Q What is that?

3 A That is the deed by which Del Valle -- I don't --
4 I'm not sure the pronunciation. I've heard a couple of
5 different ones this morning. Del Valle and his wife, as
6 trustees of the Del Valle Family Trust, conveyed title to Molly
7 and John Mulligan.

8 Q In the transaction that Metro closed?

9 A Correct.

10 MR. TILT: And Your Honor, I'd move for admission
11 of Exhibit 10 into evidence.

12 THE COURT: Any objection?

13 MR. JOHNSON: None.

14 THE COURT: Tab 10 in the binder, which has --
15 Have you identified the exhibits separately,
16 counsel?

17 MR. TILT: Like a table of contents, you mean?

18 THE COURT: Well, no. The requirement for counsel
19 in submitting exhibits is that the exhibits need to be marked
20 and identified. These do not appear to have been marked. So
21 what I'm going to do is have the binder marked as -- this is
22 plaintiff's exhibit. And this will be Plaintiff's Exhibit 1.
23 And so the documents within the binder will be referred to by
24 their tabs.

25 MR. TILT: Okay.

1 THE COURT: So that we don't have to take the time
2 of now individually labeling and marking each of the documents.
3 So I am going to require that the binder itself be marked.

4 Do you have something you can mark the binder with?

5 MR. TILT: I actually can mark each of the exhibits
6 if you want. I (inaudible) stickers.

7 THE COURT: No. I don't -- I don't want to take
8 the time to --

9 MR. TILT: Okay.

10 THE COURT: -- mark each of the exhibits.

11 MR. TILT: Yeah.

12 THE COURT: We'll simply mark the binder as
13 Plaintiff's Exhibit 1. And if counsel will, as we go through
14 the proceedings, just refer to the different documents by their
15 tab number within Plaintiff's 1.

16 MR. TILT: Sure.

17 THE COURT: So if you'll just put an exhibit
18 sticker on the front of the binder. That will be Plaintiff's
19 1. And then if counsel will just follow the protocol of
20 referring to the documents by their tab numbers within
21 Plaintiff's 1.

22 So Plaintiff's 1, Tab 10 is received.

23 (Exhibit 1, Tab 10 received.)

24 THE COURT: You may proceed, counsel.

25 Q (By Mr. Tilt) Would you turn to Exhibit 1 in the

1 binder?

2 THE COURT: Again, it's Tab 1 of Plaintiff's 1.

3 Q (By Mr. Tilt) I'm sorry. Tab 1 in the -- in the
4 Exhibit binder.

5 MR. TILT: Thank you, Your Honor.

6 THE WITNESS: Okay. I have that.

7 Q (By Mr. Tilt) Do you recognize that document?

8 A That is a copy of the Del Valle Family Trust that
9 was provided to Metro National Title in connection with the
10 sale of the property from the trust to the Mulligans.

11 MR. TILT: I move for admission of Exhibit 1, Tab 1
12 into evidence.

13 THE COURT: Any objection to Tab 1?

14 MR. JOHNSON: No objection.

15 THE COURT: Tab 1 of P-1 is received.

16 (Exhibit 1, Tab 1 received.)

17 Q (By Mr. Tilt) What was the purpose for Metro
18 requesting a copy of the Del Valle Family Trust?

19 A Because the title to the property in question was
20 held by Brett Del Valle and Traci Del Valle as trustees of the
21 Del Valle Family Trust, we needed to see a copy of that trust
22 agreement to verify the authority of Brett and Traci to act as
23 trustee, and to convey any property that was -- that is part of
24 the trust.

25 Q Would -- would a copy of the Del Valle Family Trust

1 be provided to the Mulligans in the course of such a
2 transaction?

3 A Not generally, no.

4 Q Do you know whether it was in this case?

5 A I don't believe it was. To the best of my
6 knowledge, no copy was provided to the Mulligans.

7 Q Let's have you turn, please, to Exhibit 1, Tab 5.

8 A Okay.

9 Q Do you recognize that document?

10 A Yes.

11 Q What is that?

12 A That is a copy of a deed of trust by and between
13 Brett and Traci Del Valle as trustees of the Del Valle Family
14 Trust as trustors in favor of, let's see -- it doesn't identify
15 the beneficiary, interestingly enough, on that first page. But
16 anyway, in any event, it appears to be a security instrument
17 encumbering the property in question as security for the
18 obligation identified in the deed of trust.

19 Q And I wonder if I could direct you to the top left
20 corner under where it says, "when recorded mail to." There's a
21 name of Emerald Bay there. Do you have any -- any knowledge as
22 you sit here today whether that's the beneficiary of that trust
23 deed?

24 A I think that's fair assumption.

25 MR. TILT: I move for admission of Exhibit 1, Tab 5

1 into evidence.

2 THE COURT: Any objection?

3 MR. JOHNSON: No objection.

4 THE COURT: P-1, Tab 5 is received.

5 (Exhibit 1, Tab 5 received.)

6 Q (By Mr. Tilt) Let's have you look at Exhibit 1,
7 Tab 4, please, in the binder. Do you recognize that document?

8 A Yes. That is another deed of trust by and between
9 Brett and Traci Del Valle as trustees of the Del Valle Family
10 Trust as borrowers, and the lender being BOFI, B-O-F-I Federal
11 Bank, out of California. Another trust deed that had been
12 recorded against the property and encumbered it to secure an
13 obligation of the Del Valle Trust to the lender.

14 MR. TILT: Move for admission of Exhibit 1, Tab 4
15 into evidence.

16 THE COURT: Any objection?

17 MR. JOHNSON: No objection.

18 THE COURT: P-1, Tab 4 is received.

19 (Exhibit 1, Tab 4 received.)

20 Q (By Mr. Tilt) Let's have you turn please to
21 Exhibit 8. Exhibit 1, Tab 8. And what is that?

22 A That is a copy of the posting summary, which
23 contains the information concerning disbursements that were
24 made by Metro National Title -- involved in the trans --
25 transaction, the sale of the property from the Del Valle Family

1 Trust to the Mulligans. And it and shows all the disbursements
2 that were made from that closing.

3 Q And there's a heading that says receipts. And then
4 it says payor. And then it has the Mulligans' names listed
5 there. Can you tell me what that line item means?

6 A That means that the Mulligans delivered into escrow
7 the sum of \$1,775,896.73 to the amount needed to close the
8 transaction in question.

9 Q And then under the disbursements heading, and there
10 is a list of payees there. What does that portion of the
11 document show?

12 A That shows all of the disbursements that were made
13 from that \$1,775,000 that the Mulligans deposited into escrow.

14 Q The first one there says Axos Bank. Do you see
15 that?

16 A Yes.

17 Q And the second one, then, says Emerald Bay Capital.
18 Do you see that?

19 A Yes.

20 Q It looks like the Axos Bank, the disbursement from
21 the Metro account to Axos Bank was \$712,000 and change. Is
22 that fair to say?

23 A That is correct.

24 Q And the disbursement from the Metro funds in this
25 transaction to Emerald Bay was \$948,000 even. Is that correct?

1 A Correct.

2 Q Let's have you turn please to Exhibit 11.

3 MR. TILT: Oh. Move for admission of Exhibit 8.

4 THE COURT: Any --

5 MR. TILT: Exhibit 1, Tab 8 into evidence.

6 THE COURT: Any objection to Tab 8?

7 MR. JOHNSON: No objection.

8 THE COURT: Tab 8 is received.

9 (Exhibit 1, Tab 8 received.)

10 Q (By Mr. Tilt) Okay. Let's now have you go,
11 please, to Exhibit 1, Tab 11.

12 A I have that.

13 Q Do recognize that document?

14 A Yes. That --

15 Q What is that?

16 A -- is a deed of reconveyance that references --
17 that releases the deed of trust. And if I might take a quick
18 look back at the previous tabs, I can tell you which deed of
19 trust that is referring to. That is referring to the -- the
20 Emerald Bay Capital deed of trust. That document is signed as
21 part of the transaction pursuant to instructions and
22 authorization from Emerald Bay Capital directing Metro National
23 Title to reconvey that deed of trust.

24 Q Is that your signature on that?

25 A Yes.

1 Q And when you say it refers to the Emerald Bay trust
2 deed, is that Exhibit 1, Tab 5 in the book?

3 A I believe that is correct. Let me take a quick
4 look. Yes.

5 Q And you can cross reference that by the entry
6 number?

7 A Yes.

8 Q 3066407 is released by Exhibit 1, Tab 11. And that
9 3066407 is Exhibit 1, Tab 5?

10 A That is correct.

11 Q Let's have you look --

12 MR. TILT: Move for admission of Exhibit 1, Tab 11
13 into evidence.

14 THE COURT: Any objection?

15 MR. JOHNSON: No objection.

16 THE COURT: Tab 11 is received.

17 (Exhibit 1, Tab 11 received.)

18 Q (By Mr. Tilt) Let's have you go to Tab 12, please.
19 Do you recognize that document?

20 A Yes, that is a deed of reconveyance. That refers
21 to the deed of trust in Exhibit 1, Tab 5. Oh, no. Excuse me.
22 Tab 4. Yes, referring to Tab 4.

23 Q And that --

24 A Cross referencing that via the entry number
25 reconveying and releasing that deed of trust.

1 MR. TILT: Move for admission of Exhibit 12 into
2 evidence.

3 THE COURT: Tab 12 of P-1, any objection?

4 MR. JOHNSON: Excuse me. No objection.

5 THE COURT: Tab 12 is received.

6 (Exhibit 1, Tab 12 received.)

7 Q (By Mr. Tilt) Let's have you turn to Exhibit 1,
8 Tab 6, please. Have you ever seen that document before?

9 A Yes.

10 Q When is the first time you saw that document?

11 A Probably at the time this -- this claim -- or
12 throughout the process. At some point during the process of
13 this claim and this litigation.

14 Q So after the -- the closing to Mulligans. Is that
15 fair to say?

16 A That's correct.

17 Q Did -- did Metro Title conduct a search in
18 connection with the Mulligan closing, of the court records in
19 Weber County for any judgments against the Del Valle Family
20 Trust?

21 A We searched the records of the county recorder with
22 regard to judgments, and this judgment was not found.

23 Q And in the -- in connection with searches for
24 closing in a sale like the Mulligans', does Metro routinely
25 search court records in the county, as well as county recorder

1 records?

2 A Not since the statute was changed that requires
3 that judgments be recorded with the county recorder. We do not
4 check the -- check court records as a general rule.

5 Q Okay. Let's have you look --

6 MR. TILT: Move for admission into evidence of Tab
7 -- Exhibit 1, Tab 6.

8 THE COURT: Any objection to Tab 6?

9 MR. JOHNSON: No objection.

10 THE COURT: Tab 6 is received.

11 (Exhibit 1, Tab 6 received.)

12 Q (By Mr. Tilt) And let's have you look at Exhibit
13 7. And I'll just represent to you -- or Exhibit 1, Tab 7.
14 I'll just represent to you that's the same document as Tab 6,
15 except for the Tab 7 document has a county recorder's stamp on
16 it as well. Do you see that there, above the caption?

17 A Yes. That is correct.

18 Q Okay. And it's -- it's your testimony that that
19 judgment did not come up in any search of the records in
20 connection with the sale of the property by the Del Valle
21 Family Trust?

22 A That is correct.

23 Q Do you know why?

24 A There are a couple of reasons. The primary one
25 being that, although the judgment was recorded, it was not

1 abstracted to this property, this particular parcel of
2 property. Also, the abstract that appears in the recorder's
3 office does not identify Brett Del Valle as a judgment
4 creditor.

5 Q What does that mean?

6 A It means, if you look at the abstract in the Weber
7 County Recorder's Office, it identifies Alum Rock as the
8 judgment creditor and PRP Investors Madison, et al., as
9 judgment debtors.

10 Q I see.

11 A It does not name Brett Del Valle.

12 Q Okay.

13 A That name does not appear in the recorder's
14 abstract for this judgment.

15 Q Does the name "the Del Valle Family Trust" appear
16 in the abstract of that judgment?

17 A No.

18 MR. TILT: Move for admission into evidence of
19 Exhibit 1, Tab 7.

20 THE COURT: Any objection?

21 MR. JOHNSON: No object --

22 THE COURT: Okay.

23 MR. JOHNSON: No objection.

24 THE COURT: Tab 7 of P-1 is received.

25 (Exhibit 1, Tab 7 received.)

1 Q (By Mr. Tilt) Let's have you turn to Exhibit
2 1, Tab 9, please. Do you recognize that document?

3 A Yes. This is a copy of the Weber County Recorder
4 abstract of title with -- that relates to, excuse me, to this
5 particular parcel of property that was used -- well, let me
6 take a look at it. Yes. This was in Metro National Title's
7 file as the abstract that was relied upon for purpose of
8 searching the title in connection with the Del Valle
9 Trust/Mulligan transaction.

10 MR. TILT: Move for admission of Exhibit 1, Tab 9
11 into evidence.

12 THE COURT: Any objection?

13 MR. JOHNSON: We do -- I do have an objection on
14 this document. This appears to be a printout from a website.
15 This isn't an official government record, as far as I'm aware
16 of. So I have an objection to the hearsay.

17 THE COURT: Your response, Mr. Tilt?

18 MR. TILT: He said that it's in -- the witness'
19 testimony was that it was in Metro Title's file. They relied
20 on it for purposes of conducting the closing. That sounds like
21 an argument as to weight, not as to admissibility.

22 THE COURT: All right.

23 Mr. Johnson?

24 MR. JOHNSON: I'm not sure I follow that. I mean,
25 they're offering this as the Weber County Recorder's abstract

1 of title, and that hasn't been established.

2 THE COURT: Anything else, Mr. Tilt?

3 MR. TILT: No. Except for the fact that this was
4 actually something that was produced by counsel in the briefing
5 and -- and so I'm curious as to why he's objecting. It's got
6 their Bates number on it. I think that's their Bates number.
7 In any event, that was offered by them in the briefing. So I
8 don't know that there would be a valid basis to object to it.

9 THE COURT: The ruling of the Court is that this
10 fits within the business records exception as a business record
11 of Metro National Title. It is not being offered as a record
12 from the county recorder's office. It is being offered as a
13 business record maintained in the files of Metro National
14 Title.

15 Whether it is an accurate abstract from the county
16 recorder's office, I'm making no determination of that at this
17 point. I'm simply ruling that this is a business record
18 maintained in the business records of Metro National Title.
19 And it is being -- it has been described as such by a custodian
20 of those records, a representative of Metro National Title. So
21 on that basis, it is admitted.

22 You may proceed.

23 (Exhibit 1, Tab 9 received.)

24 Q (By Mr. Tilt) Let's have you turn to Exhibit 1,
25 Tab 2, please. Do you recognize that document?

1 A Yes. That is a --

2 Q What is that?

3 A -- a copy of the recorded special warranty deed
4 dated in April of 2007, by which Brett and Traci Del Valle, as
5 trustees of the Del Valle Family Trust, acquired title to the
6 subject property.

7 MR. TILT: Move for admission of Exhibit 2 into
8 evidence.

9 THE COURT: Any objection?

10 MR. JOHNSON: No objection.

11 THE COURT: Tab 2 of P-1 is received.

12 (Exhibit 1, Tab 2 received.)

13 Q (By Mr. Tilt) Let's have you turn to Tab 3 of
14 Exhibit 1, please. Do you recognize that document?

15 A That is a warranty deed by and between a re -- a
16 copy of the recorded warranty deed by and between Brett and
17 Traci Del Valle as trustees of the Del Valle Family Trust to
18 Brett and Traci Del Valle as trustees of the Del Valle Family
19 Trust.

20 MR. TILT: Move for admission of Exhibit 3 into
21 evidence.

22 THE COURT: Any objection to Tab 3?

23 MR. JOHNSON: No objection.

24 THE COURT: Tab 3 is received.

25 (Exhibit 1, Tab 3 received.)

1 Q (By Mr. Tilt) In connection with the search of the
2 property for the -- for the closing on the trust sale to the
3 Mulligans, so referring I guess to Exhibit 9, the abstract from
4 -- from Metro's records, did Metro ever find any deed from the
5 Del Valle Family Trust to Brett Del Valle, personally?

6 A No.

7 Q Did Metro ever find any conveyance of the property
8 from Brett Del Valle personally to the Del Valle Family Trust?

9 A No.

10 Q I'd actually like to have you look at Exhibit 7
11 again. Tab 7 of Exhibit 1. And take whatever time you need
12 to. Is -- my question -- my first question is whether there is
13 any real property description in that document.

14 A No, there is not.

15 Q Is there, in Exhibit 7, any reference to the Del
16 Valle Family Trust?

17 A No, there is no reference to the Del Valle Family
18 Trust.

19 Q In the Exhibit 9 abstract from Metro's records, is
20 there any reference in there to that Tab 7 judgment that we
21 just looked at?

22 A No, there is not.

23 Q Was it required for the Mulligans' purchase funds
24 to be paid out to Axos and to Emerald?

25 A Yes.

1 Q Why?

2 A Because the contract sale between Brett and Traci
3 as trustees of the Del Valle Family Trust as sellers and the
4 Mulligans as buyers, required that all encumbrances against the
5 property be paid at or before closing, number one. And number
6 two, that a policy of title insurance be issued to the
7 Mulligans which would not disclose any such encumbrances.

8 Q If the -- let's see. Based on the order of
9 recording, I'll just represent to you that we have -- the BOFI
10 trust deed was recorded, Exhibit 4 -- Exhibit 1, Tab 4 -- was
11 recorded September of 2017. The Emerald Bay trust deed,
12 Exhibit 1, Tab 5, was recorded in July of 2020, and the Exhibit
13 1, Tab 7 document, the Alum Rock notice of judgment was
14 recorded in November of 2020.

15 If the Mulligans were subrogated to the priority
16 position of those two trust deeds that they paid off, Exhibits
17 4 and 5, would that change the priority of Alum Rock's lien at
18 all? Would that change the position?

19 A No, it would not.

20 Q Why?

21 A Because the -- those two deeds of trusts, those two
22 encumbrances shown in Exhibit 1, Tabs 5 and 6, pre-dated the
23 Alum Rock -- the entry of the Alum Rock judgment. So they
24 enjoyed priority as a matter of -- as a matter of law, and as a
25 matter of title practice.

1 MR. JOHNSON: Objection. The -- the witness is
2 offering a legal opinion.

3 THE COURT: Sustained.

4 Q (By Mr. Tilt) How long have you worked at Metro
5 Title?

6 A I've been at Metro for 14 and a half years.

7 Q Has that always been in the capacity as vice
8 president and general counsel?

9 A Yes.

10 Q And what do your duties entail in that capacity?

11 A I consult with title and escrow officers regarding
12 questions that may come up with regard to title issues, with
13 regard to escrow issues. I also process and administer any
14 claims that are made through Metro National Title. I also
15 supervise and administer the sister company of Metro National
16 Title, being Metro National Exchange Services. And
17 occasionally close transactions.

18 Q What was your position prior to that position you
19 just described with Metro?

20 A Immediately prior to Metro, I was senior -- vice
21 president senior -- let me try that again. Vice president,
22 senior claims counsel, for First American Title Insurance
23 Company for 17 years.

24 Q And what were your duties in that capacity?

25 A In that capacity, I administered claims, supervised

1 litigation, supervised and managed litigation in connection
2 with those claims.

3 Q Did that involve any analysis of legal or title
4 issues?

5 A Yes.

6 Q And what -- what was your employment prior to that
7 position with First American?

8 A Prior to that, I was with First American Title
9 Insurance Company as a chief underwriter. My -- my position --
10 I was -- I'd been -- I was with First American from 1984
11 forward to 1994, which is when I was made senior claims
12 counsel. During that period, 1984 to 1994, I was -- wore
13 various hats, particularly involving underwriting, as well as
14 claims administration.

15 Q When you say underwriting, what does -- what does
16 that mean? What were your duties with regard to underwriting?

17 A That is making decisions with regard to the
18 insurability of title in any given situation.

19 Q Does that involve reviewing title commitments or
20 reports?

21 A Yes.

22 Q Does that involve doing any actual searching?

23 A Not actual searching, but reviewing searches that
24 have been done, and examining documents and determining the
25 effect of those documents vis-a-via the title to the property

1 and its -- and the effect on its insurability.

2 Q And did you do any such underwriting work with --
3 have you with Metro since you moved to Metro Title?

4 A Yes. Essentially that same function.

5 Q Okay. Prior to 1984, what is your employment
6 history?

7 A I was employed by Associated Title Company from 19
8 -- I don't -- it goes so far -- so far back these days. I was
9 employed by Associated Title Company prior to First American.
10 And prior to that, I was employed by Guaranteed Title Company
11 from 1978 to 1980.

12 Q And in '78 to '81, I see on your CV that you were
13 an abstractor. What is that?

14 A That's essentially title searching. Searching
15 titles. Examining documents.

16 Q And after you moved out of abstracting and you
17 moved in -- what was your -- what was your title? I don't know
18 if I caught that.

19 A At Guaranteed Title?

20 Q Yes.

21 A I started off --

22 Q And Associate.

23 A -- as doing abstracting and that type of thing.
24 Ultimately -- it was a small company. Ultimately, I was
25 president of it for a year or so.

1 Q Does doing abstracting involve any decision making
2 with regard to defective documents on real property?

3 A Yes.

4 Q Do you hold any professional licenses?

5 A I'm a member of the Utah State Bar. That's the
6 primary professional license I hold.

7 Q And when did you first become barred?

8 A 1980.

9 Q Have you ever been disbarred or let that lapse for
10 any reason in the last -- since 1980?

11 A No.

12 Q And do you have any professional certifications
13 beyond the bar license?

14 A No.

15 Q Okay.

16 MR. TILT: Your Honor, I would move that this
17 witness be qualified to testify as an expert witness with
18 regard to title searching matters and the effect of documents
19 on real property.

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: I -- I would object to that. There
22 was no notice that there would be expert witnesses today. And
23 so we don't have the opportunity to provide a rebuttal witness.
24 So I would object on that basis.

25 THE COURT: The Court denies the request to

1 certify, effectively, the witness as an expert. The Court
2 doesn't certify experts. So that's -- that's an inappropriate
3 request in that regard.

4 The only question that arises when opinions are
5 made the subject of question, is whether that opinion can be
6 expressed. Opinions can only be expressed by people who have
7 training and experience to justify the expression of those
8 opinions.

9 So the Court declines the request to certify the
10 expert, simply because that is not the role of the Court, and
11 will permit the expression of the opinion that's been elicited,
12 subject to the following limitations.

13 To the extent that the opinion addresses a legal
14 issue, witnesses do not determine legal questions. The Court
15 determines legal issues. And so any opinion expressed by a
16 witness that addresses a legal matter will be given whatever
17 weight the Court considers appropriate. But it's certainly not
18 binding on the Court, and does not establish the truth of the
19 matter asserted, i.e. the legal conclusion being alleged.

20 The objection to any legal conclusion being
21 expressed by the witness is sustained. He can express his
22 opinion, and whatever that opinion may be may be considered by
23 the Court and given whatever weight the Court determines is
24 appropriate. But it is not binding on the Court, and does not
25 constitute any legal determination by the Court.

1 So subject to that restriction, the witness may
2 express his opinion on that issue.

3 MR. TILT: Thank you, Your Honor.

4 Q (By Mr. Tilt) So I return to the question, then,
5 of whether, in your opinion, as an officer of Metro Title and
6 as a person experienced with title examination and effect --
7 and determining the legal effect from an insurability
8 standpoint on real property, the question is, if the Mulligans
9 were subrogated to the position, or placed in the shoes of
10 those two trust deeds, Exhibits 4 and 5, their funds paid off,
11 would that affect -- would that put -- would that affect the
12 priority of any judgment lien held by Alum Rock?

13 A Not in my opinion.

14 MR. TILT: No further questions.

15 THE COURT: And again, for clarification, the
16 expression of that opinion does not constitute any legal
17 determination by the Court, it's not binding upon the Court,
18 and will be given whatever weight the Court determines is
19 appropriate.

20 MR. TILT: Thank you, Your Honor.

21 THE COURT: Thank you.

22 Mr. Johnson, your cross examination?

23 MR. JOHNSON: Thank you, Judge.
24
25

CROSS EXAMINATION

BY MR. JOHNSON:

Q Could we look at Tab -- Tab 6 in Exhibit 1.
Now, I -- I understand that Metro conducted a search for judgments on the property. Do -- do I understand that correctly?

A That is correct.

Q Who -- who conducted that search?

A I'm not sure. Someone in our -- our title search and examination department. I'm not sure the exact identity of that party.

Q Okay. But you don't -- you don't know who conducted the search?

A No.

Q How did they conduct the search?

A Say that again.

Q How did -- how did Metro Title conduct the search for judgments?

A It searched the -- in terms of judgments, or generally?

Q For judgments against the property. How did -- how did Metro Title search for judgments against the property?

A We searched the records of the Weber County Recorder, both with regard to the specific property and with regard to the -- to judgments filed against Brett Del Valle as

1 trustee of the Del Valle Family Trust.

2 Q And how do you know that process was used, if you
3 don't know who searched for the judgments?

4 A Because all that documentation is contained in our
5 file.

6 Q And which documentation are you referring to?

7 A The documentation containing those searches.

8 Q Is -- is that one of the exhibits you've looked at
9 today --

10 A I am not --

11 Q -- with the tabs?

12 A -- if that -- if -- I do not believe that was
13 included in the -- in this binder of exhibits.

14 Q Did Metro National Title do a search for judgments
15 on the name of Brett Del Valle?

16 A Say that again. I'm sorry.

17 Q Did Metro Title do a search for judgments on the
18 property on the name of Brett Del Valle?

19 A They would have done the search under the name of
20 Brett Del Valle as trustee of the Brett Del Valle Family Trust,
21 which is how title is held.

22 Q Okay. So if -- if I'm understanding correctly,
23 there was no search for a judgment against Brett Del Valle
24 individually?

25 A Individually, no.

1 Q And why was that?

2 A Because he held title as trustee of the trust, and
3 not individually.

4 Q Are you familiar with Utah Code 75-7-505?

5 A Yes.

6 Q And it says -- just to state it, it says, "During
7 the lifetime of a settlor, the property of a revocable trust is
8 subject to the claims of the settlor's creditors."

9 A Uh-huh. Yes.

10 Q Were you aware that Brett Del Valle was a settlor
11 of the trust?

12 A No, I don't believe we were.

13 Q Okay. Let's look at Exhibit 1.

14 THE COURT: So Tab 1 of P-1?

15 MR. JOHNSON: Excuse me. Yes. Tab 1 of Exhibit 1.

16 THE WITNESS: Yes, I see that.

17 Q (By Mr. Johnson) And what do you see?

18 A I see that Brett and Traci Del Valle are designated
19 as trustors, and Brett and Traci are also named as co-trustees.

20 Q And -- and if they're trustors, that's the same as
21 being a settlor?

22 A That would be correct, yes.

23 MR. TILT: Objection. Asks for a legal conclusion.

24 THE COURT: Sustained, with the same limitation
25 that was previously included.

1 Q (By Mr. Johnson) So your understanding of the
2 trust would be that Brett Del Valle was a settlor of the trust?

3 A That would be my understanding, yes.

4 Q And given the effect of Utah Code Annotated
5 5-7-505, shouldn't your office have done a search for judgments
6 against Brett Del Valle in his individual capacity?

7 A I don't believe --

8 MR. TILT: Objection. Asks for a legal conclusion.

9 THE COURT: Sustain the objection to the extent
10 that it calls for a legal conclusion. Given the expertise
11 that's been established, if the witness has an opinion on that
12 issue, it may be expressed, but it is not binding or con --
13 does not constitute a legal determination for purposes of the
14 proceeding. Only an expression of the witness' opinion. But
15 given the expertise that's been established, he may express
16 that opinion if he has one.

17 THE WITNESS: Could you repeat the question,
18 please?

19 Q (By Mr. Johnson) Isn't it true that, given that
20 the creditors of the settlors can make a claim against the
21 trust property, wouldn't it have been prudent for your office
22 to do a search for judgments against Brett Del Valle in his
23 individual capacity?

24 A I believe -- and maybe -- I may have misspoken
25 earlier. I believe there was a search done under the Del Valle

1 name, and nothing came up either individually or as trust --
2 well, I take that back. I think there was a judgment. Not the
3 Alum Rock judgment. Another judgment, which I believe had been
4 satisfied in a separate transaction. But there were no
5 judgments found in the -- under the name Del Valle, either
6 individually or as trustee of the trust.

7 Q Do you know that for certain, or are you just
8 guessing?

9 A No, I know that for certain. I've looked at the
10 records.

11 Q How -- how do you know that anyone in your office
12 searched for judgments against Brett Del Valle in his
13 individual capacity?

14 A Because those names appear on the search documents,
15 the abstracts that are -- copies of which are retained in our
16 files.

17 Q Are you saying that there's a document that's been
18 introduced today that shows that your office searched under the
19 name of Brett Del Valle individually?

20 A No document that's been introduced today.

21 Q Okay. So there's no document introduced today that
22 shows that your office searched under the name Brett Del Valle
23 individually. So how are we to know that your office actually
24 did do a search under the name of Brett Del Valle in his
25 individual capacity?

1 A That's what I'm here to testify to, I suppose.

2 Q But you don't even know who did the search?

3 A It's a -- one of the people in our search
4 department. There are a number of them. It could have been
5 any of them.

6 Q Have you -- have you -- what have you done to talk
7 to the people in your office who did the search to determine if
8 they searched for --

9 A I --

10 Q -- Brett Del Valle individually?

11 A I did not speak to people that did the search. I
12 relied on what is in the file. Because the file discloses what
13 was done.

14 Q But again, nothing introduced today shows that
15 search having been conducted, correct?

16 A That's correct.

17 Q Now you -- you gave some testimony, I think, along
18 the lines of that it -- the judgment doesn't show up in an
19 abstract of title?

20 A That's correct.

21 Q Okay. Is -- what's the -- what's the process of an
22 abstract? Is that something the county recorder does?

23 A Yes.

24 Q Okay. Are you saying that the county recorder did
25 something wrong when the judgment was recorded?

1 A I'm not saying one way or the other. All I'm
2 saying is what was discovered in our search. I'm not saying
3 that anybody is at fault. I don't know who may have done what.
4 I'm saying it was not there.

5 Q In -- in normal process, do you have knowledge of
6 how the county recorder would abstract a judgment?

7 A No. I know their -- I know from looking at the
8 abstracts that they generate. How they do it, what the process
9 is behind that, I have no idea.

10 Q Do you know the -- do you have an understanding of
11 the process of how a judgment is recorded in the State of Utah
12 to become a judgment lien?

13 A I --

14 MR. TILT: Objection. Asks for a legal conclusion.

15 THE WITNESS: Yeah. Generally.

16 MR. JOHNSON: What's -- what's --

17 THE COURT: Any -- any -- any response, given the
18 objection, will have the same limitation previously imposed.
19 Expertise with respect to the subject matter appears to justify
20 the expression of the opinion. But any opinion is not accepted
21 or binding upon the Court as a legal conclusion, only the
22 expression of the opinion of the witness.

23 Q (By Mr. Johnson) What's your understanding of how
24 a judgment could become a judgment lien against a property?

25 A Well, it is recorded with the county recorder's

1 office, and should be, presumably, is then abstracted in the
2 judgment index of the county recorder.

3 Q And that's a process of something the county does?

4 A That's correct.

5 Q Okay. Is there a way to search the judgment index?

6 A Yes.

7 Q And can you -- can you search by the name of
8 individuals?

9 A That's correct.

10 Q And did Metro Title attempt a search of the
11 judgment index and look for a judgment against Brett Del Valle
12 individually?

13 A Yes. Well, they ran -- yes. They ran the Del
14 Valle name and -- with the expectation that it would disclose
15 any judgments against him individually, as well as trustee.

16 Q Now, I'm confused on this point. You don't -- you
17 don't actually know if they -- if someone ran a search for
18 Brett Del Valle individually, correct?

19 A Based upon the documentation in the file --

20 Q But -- but --

21 A -- I have reached that conclusion, yes.

22 Q But not of any of the records that have been
23 presented in court today?

24 A There's -- I don't believe there are any documents
25 presented today.

1 Q This is just your general understanding?

2 A This is my knowledge based on reviewing the file.

3 Q You -- you haven't talked to the people who
4 conducted the search?

5 A No.

6 Q You haven't asked them how they did the search?

7 A No. It's -- all of that information is in the
8 file.

9 Q The file that's not before the Court today?

10 A Correct. Well, or portions of it.

11 Q Can I have you look at Tab 8? And again, can you
12 identify what this document is?

13 A It's the posting summary showing all of the
14 receipts and disbursements by Metro National Title in
15 connection with the transaction that's the subject of this
16 proceeding.

17 Q And the -- under receipts, it says payor Molly J.
18 Mulligan and John P. Mulligan. Do you see where I'm at? And
19 then there's the sum of \$1,775,896.73?

20 A Uh-huh. Yes.

21 Q Did that money come from the Mulligans or the
22 Mulligans' lender?

23 A At the time of closing, it came from the Mulligans.

24 Q How do you know it came from the Mulligans?

25 A Because, first of all, that's what it says here.

1 Second of all, there was no loan closing involved in this
2 transaction.

3 Q The Mulligans paid cash for the property?

4 A Correct.

5 Q All right.

6 MR. JOHNSON: No further questions.

7 THE COURT: Redirect?

8 MR. TILT: No, Your Honor.

9 THE COURT: All right. That will conclude the
10 witness' testimony.

11 Sir, you may step down.

12 THE WITNESS: Thank you.

13 MR. TILT: May the witness be excused, Your Honor?

14 THE COURT: Say again?

15 MR. TILT: May the witness be excused, Your Honor?

16 THE COURT: Any objection?

17 MR. JOHNSON: None.

18 THE COURT: All right. Thank you, sir.

19 The witness may be excused.

20 Any additional evidence, Mr. Tilt?

21 MR. TILT: No, Your Honor. I just would move for
22 admission into evidence of Exhibits 13, 14, 15. They're
23 certified copies of documents from the Third District writ
24 proceeding. And there's no one to testify with regard to
25 those. But they are certified copies.

1 THE COURT: Any objection to Tabs 13, 14, and 15 as
2 certified copies of court records?

3 MR. JOHNSON: No objection.

4 THE COURT: Tabs 13, 14, and 15 are received.

5 (Exhibit 1, Tabs 13, 14, 15 received.)

6 MR. TILT: I just have closing argument then, Your
7 Honor.

8 THE COURT: All right.

9 Well, we'll turn to Mr. Johnson.

10 Any evidentiary presentation that you're
11 anticipating, Mr. Johnson?

12 MR. JOHNSON: No.

13 THE COURT: All right. Then we will move to
14 argument.

15 Mr. Tilt, you may proceed.

16 MR. TILT: Obviously counsel's queries to the
17 witness with regard to the entirety of Metro Title's file not
18 being here today are a little bit tongue in cheek, because we
19 are here on an expedited hearing. If -- if counsel wants to
20 have those, he's already got them, per a prior subpoena, number
21 one. And he's welcome to schedule a deposition to talk with
22 Mr. Heiner--I'm sure he'd cooperate--to discuss that more
23 fully.

24 The point of today's proceedings, though, is that
25 there is a judgment lien foreclosure sale scheduled for January

1 21st at this point, by Alum Rock. And we are here today on the
2 motion for a preliminary injunction to restrain that sale
3 pending further litigation and ascertainment of the issues in
4 this case.

5 The statute that counsel pointed the witness to,
6 75-7-505(1) does, indeed, say that a settlor's interest in a
7 revocable trust property is subject to that settlor's judge --
8 that settlor's creditors, like a judgment lien creditor.

9 The next sentence, though, that counsel didn't have
10 the witness look at, says that when there is more than one
11 settlor, the reach of the creditor's claim to the trust
12 property may not exceed the contribution to that trust property
13 by the debtor that is -- by the settlor that is the -- the
14 debtor.

15 In this case, the settlor that is the debtor--if we
16 have a settlor at all, because there's no evidence of that--is
17 Brett Del Valle personally. And we submit, Your Honor, that
18 there is no evidence still -- not after -- not in November
19 26 -- November 26 of 2024 when we here before Your Honor, and
20 still is not today, any evidence provided to this Court
21 regarding the extent of any contribution by Brett Del Valle to
22 the trust.

23 In fact, the very last page of the trust, Exhibit
24 1, Tab 1, provides a schedule or -- a Schedule A inventory of
25 trust estate. Under community property, nothing is listed.

1 Under husband's separate property--presumably that's
2 Brett--nothing is listed. Under paragraph 3, wife's separate
3 property--presumably that's Traci--nothing is listed. There is
4 no evidence before this Court as to any interest in the
5 property at issue by Brett Del Valle personally as a settlor of
6 this trust, ever.

7 In fact, to the con -- further to the contrary is
8 Exhibit 2, the document by which Basinview Development conveyed
9 the property originally to the Brett Del Valle family trust in
10 2007. Now, the trust was created in 2002. This property is
11 conveyed directly to the trust by Basinview.

12 Exhibit 3 has another deed for some reason, that,
13 frankly, I don't know, that the trust conveys to itself in
14 September of 2007.

15 Then we have the Exhibits 4 and 5, trust deeds, the
16 trust encumbers the property for obligations that it posed.

17 Then we have the Exhibit 9 abstract out of the
18 Metro Title records, from its title search of the property in
19 connection with the closing. Significantly, that abstract
20 includes a list of conveyances and liens and so forth dating
21 back to 1980. October 6, 1980. Zion's Bank reconveyance of
22 the trust deed is the very first thing listed there. And it
23 goes all the way up to a -- a February 25, 2021 request for
24 notice that was recorded.

25 The date that this has on it, at the first page of

1 Exhibit 1, Tab 9, is 5-11-2021. I'll submit that that's the
2 same date that Exhibit 10 -- Exhibit 1, Tab 10 -- was recorded.
3 The deed from the trust to the Mulligans.

4 In other words, at no time--and the witness said
5 this--at no time in any record shown in any abstract did Brett
6 Del Valle personally have any interest in this property. The
7 only evidence before this Court is that Brett Del Valle did not
8 contribute that property to the trust. The trust bought that
9 property on its own accord. Brett Del Valle did not contribute
10 that property to the trust.

11 Therefore, Alum Rock can have no lien on that
12 property at all, because the statute says they can only have a
13 lien to the extent of the settlor's contribution, which in this
14 case, so far, the evidence is zero.

15 The -- the other issue, main issue in this case is
16 that, even if there is a -- a right or ability of Alum Rock to
17 reach any extent of that property at all, if Brett was shown in
18 this case ever to have actually contributed that property to
19 the trust, then that would be the extent of their interest.
20 That might be 1 percent. That might be 25 percent. It might
21 be 50 percent.

22 We don't know what that is. And without any
23 knowledge of any contribution by Brett at all, much less the
24 extent of any contribution by Brett, there cannot be a
25 foreclosure allowed on the real property with regard to a writ

1 of execution that is effective only against Brett, on a
2 judgment that only is against Brett, that is not a judgment
3 against the trust.

4 Even if any part of the property was contributed by
5 Brett, and even if any part of the property, therefore, is
6 subject to the writ as claimed by Alum Rock, that is equitably
7 sub -- subordinated to the Mulligans' interest.

8 The Mulligans paid \$1.75 million in cash for this
9 property, \$712,000 of which paid off a prior lien of the Axos
10 Bank. The Exhibit 1, Tab 4 trust deed. Another \$948,000 of
11 which went to pay another trust deed, Exhibit 1, Tab 5 --
12 excuse me Exhibit 1 -- yeah, Exhibit 1, Tab 5, the Emerald Bay
13 Capital trust deed, as shown by the Exhibit 8 posting summary.

14 So because the Mulligans paid off those prior
15 encumbrances, which were obligations owed by the trust, not
16 owed by the Mulligans, the law provides that they are equitably
17 subrogated to the position of those liens that they paid off.

18 And that is because the doctrine of equitable
19 subrogation is an equitable doctrine. It -- it says that
20 judgement lien creditors such as Alum Rock should not be
21 elevated to a priority position which it would not otherwise
22 have had, simply because there was a payoff of other liens and
23 encumbrances on the property when the -- when the judgment here
24 could not -- that's claimed by Alum Rock, the judgment could
25 not be found in a title search.

1 So it -- it would be a windfall to Alum Rock to
2 allow them to foreclose without taking into account and
3 subordinating its interest to this \$1.75 million that the
4 Mulligans, as testimony was, were required to pay off in order
5 to close their loan -- in order to close their purchase of the
6 property and get title conveyed to them.

7 They did not do that as a volunteer or an
8 intermeddler. They did that to pay off an obligation owed by
9 somebody else, because they were required to.

10 So equitably, they ought to enjoy the -- step into
11 the same shoes as that party, and not allow a lien foreclosure
12 by Alum Rock.

13 It's telling, frankly, that the -- the timing of
14 this. We have the judgment lien of Alum Rock, which is Exhibit
15 7--Exhibit 1, Tab 7--was recorded in November of 2020. And at
16 that time, the Exhibit 4 and the Exhibit 5 trust deeds were
17 already of record against the property. So Alum Rock did
18 nothing.

19 And they waited and they waited and they waited,
20 until May of '21, those judgment -- those prior trust deeds get
21 paid off. And then it's not until June of '21 that Alum Rock
22 then files its writ of execution -- files the application for
23 writ of execution, which is Exhibit 13 in the binder.

24 They did exactly what the law is not -- does not
25 allow them to do. They laid in wait, knowing that they were

1 junior to those prior encumbrances on the property, and then
2 they sprang up in hopes to enforce a judgment owed by Brett
3 against the Mulligans' property. And that is an inequitable
4 windfall situation.

5 And it is not inequitable, by contrast, to allow
6 the Mulligans to -- to be subrogated to the priority position
7 of the trust deeds that they paid off, because that is -- that
8 leaves Alum Rock in the exact same position it was before. It
9 cannot foreclose as against those interests that it could not
10 have foreclosed against anyway.

11 The plaintiff argued in the brief -- or excuse me,
12 the Alum Rock argued in the briefs that -- over the burden of
13 proof and whether there was a requirement for -- it's been our
14 contention all along that under 75-7-505(1), where the statute
15 says that the judgment lien creditor, Alum Rock, can only reach
16 the property to the extent of Brett's contribution in it, that
17 it would be Alum Rock's burden to prove what that interest of
18 Brett was, what his contribution interest was in the property,
19 and therefore what they can foreclose against.

20 Counsel has argued in the briefs that, no, it's --
21 the Mulligans are the plaintiffs in this case, and it therefore
22 is the Mulligans who have the burden of proof on that issue.
23 But if the Court looks at Exhibit 13, the application for writ
24 of execution, and Exhibit 14, the actual writ of execution that
25 were issued out of the Third District Court, Alum Rock is

1 identified as the plaintiff. Exhibit 14 is the writ of
2 execution that is the subject of, and the basis for the
3 foreclosure sale that they have scheduled for January 21st.

4 In other words, in -- insofar as a potential sale
5 on the 21st goes, it is Alum Rock who is the plaintiff. It is
6 Alum Rock who, by statute, therefore, has to prove the extent
7 of any interest that they could potentially foreclose on under
8 their writ.

9 And again, even if it was the Mulligans' burden to
10 prove, as plaintiffs in this case, we think, for the reasons
11 I've outlined earlier, that we have met that burden of proof,
12 at least sufficient enough to require the foreclosure sale be
13 restrained pending further discovery and further litigation in
14 due course.

15 When I got here today, I had found that I neglected
16 to put a copy of this case in my materials. But I do want to
17 provide a citation. And I'm happy to provide copies later if
18 necessary. But there's an Arizona case, Sourcecorp Inc. versus
19 Norcutt, it is 258 P.3d 281 from the Arizona Court of Appeals
20 2011, which deals with a case that is --

21 THE COURT: Give me that citation again.

22 MR. TILT: Sure.

23 THE COURT: 258 P.3d.

24 MR. TILT: 258 P.3d 281 --

25 THE COURT: Okay.

1 MR. TILT: -- Arizona Court of Appeals, 2011. It's
2 called Sourcecorp versus Norcutt. The facts of that case are
3 eerily similar to this one.

4 Norcutts paid cash to buy a home. In that case,
5 the title company had missed a judgment lien held by
6 Sourcecorp. Sourcecorp initiated a sheriff's sale proceeding,
7 and eventually the court, on appeal, said that equitable
8 subrogation applied and that Sourcecorp could not foreclose
9 against Norcutt.

10 Now obviously you substitute Mulligans for Norcutt
11 and Alum Rock for Sourcecorp, and you have our case here.
12 Mulligans paid cash to buy a home. There was a judgment lien
13 held by Alum Rock. And Alum Rock is now attempting to conduct
14 a sheriff's sale.

15 The Court of Appeals in that case accepted the
16 equitable subrogation arguments of the Norcutts, so the folks
17 in the position of -- of Mulligans, explaining that -- that the
18 Norcutts stepped into the shoes of the prior creditors that
19 they had paid off, because they were sub -- oh, the court
20 was -- the court was aware of the doctrine that the property --
21 real property is unique and irreplaceable, and that factored
22 large in the opinion.

23 But the court said that the equitable subrogation
24 doctrine applied, because otherwise Sourcecorp, or Alum Rock,
25 would have been elevated to a priority position just due to a

1 mistake in a title search.

2 And I'm not suggesting there was actually a mistake
3 in the title search. That is what it is. And the -- the
4 trust, the seller of the property, did not have any judgment
5 against it. The -- the settlor, Brett, if he's a settlor, did
6 have a judgment against him. And we concede that that is
7 recorded. But it wasn't findable in the judgment record, as
8 the testimony was, that Brett's name didn't come up in a search
9 of the judgment records. So it wasn't findable.

10 And under those facts, the court analyzed the four
11 equitable subrogation elements, which are that the party
12 asserted -- party asserting subrogation has paid the debt.
13 That definitely has occurred in connection with this case.

14 Number two, the party asserting subrogation was not
15 a volunteer. That also is established in this case. Because
16 they were required to pay that off to get clear title to the
17 property.

18 Number three, the party asserting subrogation was
19 not primarily liable for the debt. The face of those trust
20 deeds themselves show that those were debts of the Brett Del
21 Valle Family Trust. They were not the Mulligans' debts or
22 obligation.

23 And number four, no injustice would be done to the
24 other party by allowing subrogation. That also is the case
25 here. Because Alum Rock always was subject to those prior two

1 trust deeds. There's no reason why they should be elevated to
2 a position to -- that would be a windfall to them, to the
3 substantial prejudice of the Mulligans, whose real property
4 would potentially be lost to this judgment lien foreclosure.

5 So excuse me. We submit that certainly -- in the
6 case at large, we think there's a substantial likelihood that
7 we will prevail. But we certainly feel like we have shown
8 sufficient evidence of that for purposes of today's hearing, to
9 establish the elements for a preliminary injunction.

10 Injunctive relief will be afforded under Rule 65A
11 if there's a substantial likelihood of prevailing on the
12 merits. And we've discussed that. Indeed, Your Honor already
13 held in November in the separate case that the Mulligans were
14 entitled to prevail and show what interest of Brett's, if any,
15 the contribution interest, was, in fact, subject to the writ of
16 execution.

17 The second element under Rule 65A is the applicant
18 will suffer irreparable injury. I quoted the case law earlier
19 where Utah has long recognized that each piece of property is
20 considered legally unique, and therefore irreplaceable. And
21 therefore, irreparable injury is met.

22 The injury to the applicant outweighs any injury to
23 the restraining party is the third element under 65A. And
24 again, Mulligans losing their irreplaceable real property
25 versus Alum Rock being forestalled from foreclosing and

1 collecting cash money is -- the balance of harms certainly
2 weighs in favor of the Mulligans in this case.

3 And the order -- the final element is that the
4 order or injunction would not be adverse to the public
5 interest. We submit that absolutely is the case. It actually
6 would be supportive of the public interest. Because again,
7 under 75-7-505(1), it is the Alum Rock folks' burden to prove
8 what contribution interest, if any, Brett made to the property,
9 and to prove, therefore, the maximum possible extent of any
10 foreclosure of the Alum Rock lien against that property.

11 So we submit all those elements are met, that the
12 Court ought to issue the preliminary injunction and allow this
13 case to move forward in -- in due course.

14 THE COURT: Thank you, counsel.

15 MR. TILT: Thank you.

16 THE COURT: Response, Mr. Johnson?

17 MR. JOHNSON: Thank you, Judge.

18 Alum -- Alum Rock continues to believe this is
19 simply the wrong forum for all of these issues to be raised.
20 Again, there is a pending matter in the Third District Court
21 where the Mulligans have already challenged the writ of
22 execution, and whether or not Alum Rock should be able to
23 proceed with the writ of execution.

24 If we look at the Mulligans' Exhibit 15, they've
25 already briefed some of these issues before the Third District

1 Court. Specifically on page 3, their paragraph 4, it says,
2 "The writ of execution was issued improperly because." If you
3 look at the second paragraph, they argue, "The writ of
4 execution is available only to seize property in possession or
5 under the control of the judgment debtor, Brett Del Valle, an
6 individual.

7 "However, as shown under item 3, herein above,
8 Brett Del Valle, an individual, does not own the property
9 presently, has not owned it, further, and has never owned the
10 property. The property has been in the possession and under
11 the --" And then they continue to mention that the property is
12 now owned to the Mulligans.

13 So for three years now, the Mulligans have been
14 arguing that Alum Rock doesn't have a right to proceed with
15 this writ of execution. And they had the opportunity to
16 present every argument as to why the writ of execution should
17 not be allowed. And they -- and they lost, ultimately.

18 They had -- they had other arguments, that the
19 judgment lien wasn't properly recorded. Went up to the Supreme
20 Court. The Supreme Court said, you have a writ -- the writ --
21 the judgment lien is valid. And under Utah law, because Brett
22 Del Valle was the settlor, the judgment lien applies to the
23 property.

24 And -- and now we have more -- more argument, more
25 nuanced arguments about why Alum Rock can't proceed with its

1 writ of execution. Specifically, we're citing to 75-7-505. So
2 it clearly states that, "During the lifetime of a settlor, the
3 property of a revocable trust is subject to the claims of the
4 settlor's creditors." That -- that was argued, briefed in the
5 writ of -- before Judge Mow in the Third District Court.

6 Now they want to argue the second part of that
7 second sentence. And we believe that those arguments should
8 have been brought. Should have, could have, been brought
9 before Judge Mow. And this gets to the issues that we mainly
10 relied on, which is a matter of jurisdiction, and whether this
11 Court should entertain jurisdiction of what is an issue before
12 the Third District.

13 And we have the principle of comity. There is --
14 there is one particular cite that I -- I want to read. If I
15 can find it. It is the Burningham versus United States case.
16 And when you have one district court handling a matter and then
17 another district court is brought in on the same issues -- this
18 is page 11 our -- page 11 of our brief. "Comity dictates that
19 courts of coordinate jurisdiction not review, enjoin, or
20 otherwise interfere with another's jurisdiction."

21 This Court needs to take a hard look at -- at what
22 are the issues, legal issues, before Judge Mow in the Third
23 District, and decide whether it wants to be enjoining the
24 Second -- Second -- the Third District Court. We would urge
25 and argue that this Court should not do that. That if the

1 Mulligans believe they have additional legal arguments about
2 why the writ of execution should not proceed, that those issues
3 should be brought before the Third District Court.

4 They -- they could have brought this very
5 proceeding. They could have filed a motion for temporary
6 restraining order and a motion for preliminary injunction in
7 the Third District. They could have made all of these same
8 arguments.

9 The problem they have is, that they didn't bring
10 any of these arguments, back in 2020 and 2021, initially. And
11 now they're bringing new legal arguments about why the writ of
12 execution should not be allowed to proceed. This is where the
13 issue of claim -- claim preclusion comes in. There are no new
14 facts here. They simply failed to bring these legal arguments
15 before the Third District Court.

16 The Third District Court issued a final ruling --
17 excuse me, issued a final judgment in the matter allowing Alum
18 Rock to proceed with its writ of execution. That final
19 judgment was then appealed to the Supreme Court, and Judge
20 Mow's decision was upheld.

21 Exhibit 2 to our brief is the ruling and order of
22 Judge Mow, discussing all the legal issues presented by the
23 Mulligans at that time.

24 Exhibit 3 is our -- the Supreme Court decision
25 affirming the decision. And for those reasons, again, this

1 Court should just decline to exercise jurisdiction.

2 There's a -- a related legal issue. This is really
3 a collateral attack of the Third District Court's decision.
4 We've included briefing on that.

5 In terms of process, there's been suggestions that
6 we are trying to take advantage of -- of the Mulligans somehow.
7 After the -- or playing games with our writ of execution.

8 After the Supreme Court issued its ruling, we
9 immediately contacted the Weber County Sheriff to proceed with
10 our writ of execution. And in November, they finally were able
11 to move forward with the sale. They noticed up the sale. It
12 had nothing to do with the timing of this other matter that was
13 heard before you. And that sale is now cancelled, pursuant to
14 the Court's order.

15 This -- this matter is now the Mulligans' third
16 attempt to enjoin the sale of this property. They -- they lost
17 with Judge -- Judge Mow. They seemingly didn't like the
18 Court's prior ruling in this -- this other matter brought by
19 the other judgment creditor. I don't know why they withdrew
20 their motion, but they withdrew the motion and then filed this
21 action.

22 That's all the argument I have, unless the Court
23 has any questions.

24 THE COURT: I don't have any additional questions.
25 Thank you, counsel.

1 MR. JOHNSON: Thank you.

2 THE COURT: Any reply, Mr. Tilt?

3 MR. TILT: Briefly, yes.

4 Counsel has said a couple of times that we had
5 every opportunity to raise every argument to Judge Mow. But in
6 fact, we did not. Theirs was merely a writ proceeding. The
7 Utah Supreme Court made it abundantly clear that a writ
8 proceeding is not an action with respect to real property.

9 And in the writ proceeding, the court's forms as to
10 the bases for potential objections are merely whether the
11 issuance of the writ is -- is improper, or attackable somehow.
12 Everything that was dealt with in the Third District in the
13 writ proceeding had only to do with statutory compliance for a
14 judgment lien and rule compliance for a writ of execution. It
15 had nothing whatsoever to do with the real property interests,
16 as the Supreme Court has already said now was correct. Because
17 that was not an action with regard to real property.

18 And under the venue statute quoted by the Alum Rock
19 court in this case, the Supreme Court, the venue statute says
20 that actions involving real property, quote, "shall be tried in
21 the county in which the subject of the action is situated."
22 There's an ellipsis in there. Shall.

23 There is no jurisdiction for us to have brought any
24 of our real property claims that are the subject of this case,
25 quiet title, and declaratory judgment and so forth, no

1 jurisdiction for us to bring that before Judge Mow. We
2 couldn't have brought anything but the claims that we did bring
3 in connection with Judge Mow.

4 And we are not here collaterally attacking that.
5 We understand it's gone up on appeal and we lost on appeal.
6 But the only thing that was dealt with by Judge Mow, the only
7 thing that was dealt with by the Utah Supreme Court is whether
8 there was statutory compliance for a judgment lien, and whether
9 there were -- was an appropriate writ issued under the
10 requirements of the rule.

11 The Court did not rule on any real property claims.
12 The Court told us that when we tried to invoke the venue
13 statute to say that Judge Mow didn't have authority to issue
14 the writ out of his Court, the Court excoriated us in
15 paragraphs 65 and 66 saying, "There is no cause of action here
16 at all." Indeed -- quote at page -- paragraph 66 of the
17 Supreme Court opinion. "Indeed, no cause of action is at issue
18 at all," period.

19 And then it goes on a few sentences later, in
20 paragraph 65, "Simply put, this proceeding," not action, "this
21 proceeding to enforce that judgment through a writ of execution
22 is not an action involving real property governed by the venue
23 statute."

24 So we could not -- we did not bring any of these
25 claims before. We haven't been rejected on any of these claims

1 before. Counsel says this is our third attempt to -- to get a
2 bite at this apple. It's our first attempt.

3 We were not even a party to the writ case. That
4 was between -- that was just a domestication of the judgment
5 from California between only Alum Rock and Brett Del Valle
6 personally. Mulligans were not a party to that. They had
7 limited ability to object under the write proceedings. We
8 brought what we could brought -- what we could bring.

9 Counsel -- so -- so we didn't bring that case. We
10 did attempt to bring Alum Rock into the Single Box case. And
11 we had that hearing that I mentioned in November with Your
12 Honor. And counsel queries why we withdrew our motion. That
13 was because Alum Rock filed this foreclosure action --
14 proceeded with the sheriff sale for the foreclosure. And there
15 was just no ability for us to do anything in that case.

16 We therefore had to file a new case in order to get
17 this before the Court in a timely manner. And we felt it was
18 disingenuous to the Court to have two different lawsuits
19 asserting the same claims against Alum Rock. And we had -- we
20 would have been chided for that by -- by counsel if we had done
21 it that way. We were trying to keep a clear record, is all.

22 There's no collateral attack on the issuance of the
23 writ. That's been upheld. We get it. Or on whether there's a
24 judgment lien. We've been up -- that's been upheld. We get
25 it.

1 But as Your Honor noted in the hearing in November,
2 in the Single Box case, Footnote 7 of the Supreme Court opinion
3 in this Alum Rock case, it says that there has not been a
4 determination as to the extent of the lien and that there is a
5 -- it is therefore appropriate for us to have -- put Alum Rock
6 to their burden of proof under the statute to prove what
7 Brett's contribution interest to the property was as a
8 co-settlor, since that is the sole extent of any property they
9 can reach, whether it be by judgment lien or by writ.

10 So with that, Your Honor, I'll submit the motion,
11 unless there are any questions from the Court.

12 THE COURT: I don't have any additional questions.
13 Thank you, counsel.

14 The matter that's before the Court today is a
15 request for a preliminary injunction. Much of the argument and
16 evidence and exhibits that have been presented extend well
17 beyond the issues that are directly before the Court.

18 As has been correctly noted by Mr. Tilt in his
19 reply, actions involving executions and objections to
20 executions call into question two specific issues. And by rule
21 those issues are whether the execution -- whether the writ was
22 properly issued, and the second issue, which is not
23 particularly relevant here, is whether the property is exempt
24 from execution. That is also a proper basis for objecting to a
25 writ of execution.

1 As Mr. Tilt has also correctly acknowledged, there
2 is no question as to the propriety of the writ of execution.
3 That's not an issue that's before the Court. That has been
4 decided. It was decided by Judge Mow. The -- that issue was
5 appealed, and has been decided by the Supreme Court. And this
6 Court is not in a position to do anything with respect to those
7 determinations.

8 The -- the holding of the Supreme Court, and this
9 is found in paragraph 3, they set forth three specific
10 holdings. "We hold that Alum Rock created a judgment lien when
11 it recorded the judgment in the county recorder's office."
12 That is no longer subject to dispute. That's been determined.
13 That's final.

14 Second, and I'm quoting again, "We hold that the
15 writ was available against the property, even though the title
16 was held in the name of the revocable trust, because Brett
17 retained an indicia of ownership over the property when the
18 lien was created." That issue is no longer the subject of
19 dispute and is no longer the subject of consideration by this
20 Court. That has been decided by the Supreme Court.

21 So the writ was available, and Alum Rock created a
22 judgment lien. So the lien exists and the writ exists.

23 And number three, "We hold that the Mulligans have
24 not identified a relevant limitation on the district court's
25 jurisdiction that would prevent the issuance of the writ."

1 Those three holdings, in composite, establish the
2 validity of the writ, and that it has attached to the property.
3 And those are questions of enforcement of the writ. And they
4 are not before this Court, and are not considered by this
5 Court. They have been resolved.

6 Whether there were arguments made by the Mulligans
7 to Judge Mow in 2021 before the issues went to appeal does not
8 leave those issues pending now. Those issues are not pending.
9 Those issues have been decided. And whatever arguments the
10 Mulligans may have made with respect to either the validity or
11 enforceability of the writ itself, its issuance, its attachment
12 to the property interest, and the absence of any proper
13 objection, have all been determined.

14 What the Supreme Court did not determine--and this
15 is, again, the focus of the Court's prior discussion in the
16 related case-- addressed in Footnote 7, which is -- and I'm
17 quoting from that footnote. "Neither side has addressed
18 whether Traci's joint ownership of the property has any effect
19 on the judgment lien. For that reason, we express no opinion
20 on the matter."

21 There is not a determination by the Supreme Court
22 as to what, or the extent of the property interest of Mr. Del
23 Valle, or Brett Del Valle, or however you pronounce the name,
24 I'm not sure. And I know everyone struggled and -- and
25 pronounced that a little bit differently. That's not

1 particularly relevant.

2 But the question is, the extent of the interest to
3 which the judgment attaches. There is no question that there
4 is a judgment. There is no question that the judgment created
5 a lien. There is no question that that judgment lien attaches
6 to the property. The question is, what is the property?

7 Which raises the very question that Mr. Johnson
8 suggests. Is this action an action to enforce the judgment, or
9 is it an action to determine an interest in property?

10 The language of the Supreme Court decision is
11 helpful in that regard. In this paragraph 66, which counsel
12 just referred to in closing, there is a discussion -- or 65.
13 There is a discussion about the property interest and the
14 distinction between an action for enforcement, the writ of
15 execution, and an action to determine a property interest. And
16 I quote from paragraph 65. In fact, I'm going to read the
17 whole paragraph.

18 "The Mulligans have not identified any relevant law
19 that would limit a district court's authority to issue a writ
20 of execution to be effectuated in a county outside that court's
21 judicial district."

22 That is the heart of the ruling of the Supreme
23 Court. The Third District Court did have the authority to
24 issue a writ against property in Weber County. And that is no
25 longer in dispute.

1 And then I continue the quote. "We first cite a
2 venue -- they first cite a venue statute which provides that,
3 quote, "actions" and that's in internal quotes, for certain,
4 quote, "causes involving real property shall be tried in the
5 county in which the subject of the action is situated." And
6 there is a reference to section 78B-3-301(1).

7 And then the Supreme Court goes on, "Those causes
8 are for the recovery of real property, or of an estate or
9 interest in the property for determination of the right or
10 interest in the property, for injuries to real property, for
11 the partition of real property, for the, quote, foreclosure of
12 all liens and mortgages on real property."

13 In this case, the relevant language to this Court
14 is the question at the beginning, when it says that these
15 causes are--and I'm going to simply focus on the language which
16 this Court believes is critical for a current determination--so
17 those causes are, or specifically include, the determination of
18 the right or interest in the property.

19 The question that's before this Court today is,
20 what is the right or interest of Brett Del Valle in the
21 property? What is that right? The Supreme Court declined to
22 opine on that very question in Footnote 7, saying that it's
23 expressing no opinion on the impact of the ownership of someone
24 else.

25 The ownership of someone else, a joint owner

1 perhaps, affects the joint interest of the other joint owner.
2 So determining the impact of that joint owner, the spouse,
3 co-settlor in this case, requires an evaluation of the
4 respective interests, at least of these two parties.

5 That is the determination of an interest in the
6 property. And that question is entirely independent of the
7 question of the validity or the authority of the court to issue
8 the writ of execution.

9 It -- the Supreme Court certainly acknowledged by
10 its citation the reference to the rule that says, "The
11 determination of causes involving the real property, which by
12 its own language includes determination of interest in the
13 property, are to be tried in the county where the property is
14 located."

15 The Third District Court has not been asked to
16 determine an interest in property. It's not been asked to
17 determine what the respective rights of the co-settlors are, or
18 the -- the ownership that may be reflected by either of them,
19 or the contributions that they have made. That's not been
20 addressed in the Third District. That is a determination of
21 the interest in property.

22 And the Court notes, and the Supreme Court did
23 essentially the same thing in its discussion of what the focus
24 of that appeal was, which is the enforcement action, the
25 execution itself, the writ of execution. Is the writ of

1 execution valid? And the Supreme Court determination that it
2 was.

3 In -- and it references this interest in real
4 property. And refers to the prior litigation in California,
5 for example. And indicates that there's no indication that the
6 litigation in California had anything to do with real property.
7 And yet, that judgment that was obtained in California formed a
8 proper basis for the entry of a judgment in the Third District.
9 That recording of that judgment with the county recorder's
10 office in Weber County, which created a lien for the holding of
11 the Supreme Court. And an execution issued by the Third
12 District Court based upon that lien.

13 So there's a judgment that was done in California.
14 That doesn't mean the Third District Court stepped into that
15 judgment or litigated any issue with respect to that judgment.
16 That was not the issue before the Third District Court. And it
17 didn't need to be. That was entirely outside of what the Third
18 District Court was doing.

19 What the Third District Court did was pick it up as
20 an enforcement action. A request for a writ. They granted the
21 writ. The Supreme Court determined that that was proper and
22 the writ is enforceable.

23 Now a question has arisen, what is the property --
24 what is the property interest that may be sold pursuant to that
25 writ? That's not a determination of whether the writ was

1 validly issued, or whether the Third District Court had the
2 authority to issue that writ. That is a question of what is
3 the property interest involved? And that is the express
4 question on which the Supreme Court declined to state an
5 opinion. Because that would involve a determination of a
6 property interest.

7 And so the ruling of the Court is, the issue that
8 is before this Court is a separate interest. And that is the
9 determination of the interest in the property. And that that
10 is properly before this Court, and would not be properly
11 referable to the Third District.

12 The Third District is not in a position to
13 entertain an argument that, "Well, this property in Weber
14 County belongs 50 percent to so-and-so and 40 percent to
15 somebody else. Or 30/60. Or 30/70 -- 90 -- or 30/70, or
16 90/10, or there's no interest at all. We're going to determine
17 that there is no interest in the property, or that there's 100
18 percent ownership in the property." That is a determination of
19 the interest in the property. And that is not a proper
20 question for the Third District Court to determine. The
21 determination of the interest in the property lies in this
22 court.

23 Now, I must say the Court has not been impressed by
24 the multiple filings of actions by the Mulligans in this court
25 which have raised similarly -- similar or overlapping issues.

1 I understand that there has been shortness of time, and so
2 certainly some allowance has to be made for that.

3 But the question, and the ruling of this Court, is
4 that there is a property interest that has to be determined.
5 Now that ruling does not impair the writ of execution at all as
6 far as its validity and its enforcement. But what it does do
7 is require that the execution not be confusing or inappropriate
8 in its scope. And that is the execution may properly proceed
9 against the interest of Brett Del Valle in the defined
10 property.

11 The judgment lien has attached to it, and the
12 execution is appropriate. And whatever Brett Del Valle has may
13 be the subject of a proper execution. But the entire property
14 has not been determined by this Court to be within the interest
15 of Brett Del Valle. So any suggestion in the execution that
16 the entire property may be sold, and that the buyer therefore
17 may believe that they're obtaining some fee simple interest in
18 the entire property, would be inappropriate. And for that
19 reason, the Court believes that a preliminary injunction is
20 appropriate, based upon the scope of the property interest that
21 is perceived to be covered by the writ.

22 The Court does nothing at all to undermine or
23 impair the validity of the writ, the validity of its issuance,
24 or its current enforceability. But the ruling of the Court is
25 that writ may only extend to whatever interest Brett Del Valle,

1 including his individual interest or his interest as a settlor
2 of the trust, may have in the property. Those are the
3 determinations of the Supreme Court. Those interests are
4 subject to execution. But those interests have not yet been
5 determined, and there is a dispute as to what those interests
6 are.

7 And so if Alum Rock wants to execute on those
8 interests in the property, Alum Rock may. But the same
9 situation would occur, for example, if there were a deed that
10 conveyed this particular property to five different individuals
11 and a judgment is obtained against one. That judgment, if a
12 writ of execution is sought, regardless of the county in which
13 it was sought, can't execute on the judgment of all of the
14 individuals that are owners of the property. It can only
15 execute on the interest of the individual who is subject to the
16 judgment. And that's the same limitation that the Court is
17 imposing here.

18 And so whatever interest Brett Del Valle has either
19 individually or as a trustee of the trust is subject to
20 execution. But in order to avoid confusion in title ownership
21 or anything else, the Court will require that the execution be
22 so limited. It's valid. It's enforceable. But it is
23 restricted to the interest of Brett Del Valle, either
24 individually, or as a settlor of the trust in the property.

25 And so that is the ruling of the Court. And the

1 preliminary injunction as to the current proposed sale, which
2 contains no such limitation on the interest of the property to
3 be sold, is granted.

4 Now, I -- I am aware that both by rule and in the
5 request of Alum Rock, there was a request that a bond be
6 posted, a security be posted in this case to protect the
7 interest of Alum Rock. The Court declines to require that a
8 bond be posted in this case, for the reason that there has
9 already been a determination by the Supreme Court that there is
10 a lien, that that lien is valid, and that it encumbers the
11 property.

12 There's been no showing by Alum Rock, who is
13 requesting the bond, that the property has the possibility of
14 declining in value, or that it might be lost or that it might
15 be removed from the jurisdiction of the court. It's real
16 estate. And that real estate certainly has value. And there's
17 been no showing of what bond may be appropriate to protect that
18 value from any potential loss or damage that may occur while
19 the injunction is in effect.

20 So the Court grants the preliminary injunction as
21 expressly provided and limited by the Court. That is, the
22 execution may not go forward in the current extent that
23 suggests a sale of the entire property. And the Court will not
24 require that a bond be posted to support that preliminary
25 injunction.

1 So Mr. Tilt, I'm going to ask that you prepare a
2 brief order consistent with that determination.

3 Significantly, the Court is making no ruling
4 whatever on issues of equitable subrogation or the nature of
5 extent of anyone's interest in the property. Those are
6 determination of real property interest. They cannot be made,
7 certainly in connection with a preliminary injunction hearing,
8 to address the sufficiency of a writ of execution. They may
9 very well be relevant and important for determination in the
10 case, but they are not before the Court today.

11 The Court also notes that the Court makes no ruling
12 today with respect to any other action in the prior case.
13 However, I am going to just make a couple of cautionary
14 statements about that.

15 The Court has issued a ruling in that case, based
16 upon the motion of the Mulligans, and the Court expects that an
17 order will be submitted on that ruling. There has been a
18 suggestion that, well, we're going to withdraw that motion. If
19 there is going to be a withdrawal of the motion, I will require
20 a hearing on the withdrawal of that motion to determine the
21 propriety of withdrawing the motion after the Court has ruled
22 on it.

23 That would, perhaps, be the same suggestion as
24 suggesting that a judgment, once entered by the court, can be
25 entirely voided simply by seeking to dismiss the action on

1 which the judgment was originally obtained.

2 I'm not making a ruling right now. But I am
3 certainly not endorsing the suggestion that a party may await
4 the ruling of the Court to determine whether they really want
5 to go forward with their motion. That determination is made
6 when the motion is argued. If it's going to be withdrawn, it
7 can be withdrawn before the Court makes its ruling.

8 But after the Court makes its ruling, there is a
9 ruling. And that does not permit a party simply to withdraw
10 the motion because they don't like the result of the ruling.

11 So in this case, there is a ruling. The Court
12 still expects a judgment. If you want to have an issue, or if
13 you want to have argument on a motion to withdraw post
14 determination, that can be considered. But the Court has not
15 simply accepted it at face value. And I just want to make sure
16 that everyone is aware of that.

17 So that's where we are. The preliminary injunction
18 is granted. And that is as far as we're going. And the only
19 impact on the execution is that the current description of the
20 property that may be sold is inappropriate, or overbroad, given
21 the property interest that may be properly subject to that
22 execution.

23 So I am not precluding the execution from going
24 forward, and I am not imposing any restriction on Alum Rock
25 with respect to the determination or enforceability of that

1 writ, but I am requiring that it be more -- that it more
2 properly define the interest that is subject to execution prior
3 to its going forward.

4 So again, Mr. Tilt, I'm going to ask that you
5 prepare documentation consistent with the ruling.

6 MR. TILT: Thank you.

7 THE COURT: All right.

8 Are there any questions, Mr. Tilt, that you have
9 regarding the Court's ruling today in connection with that
10 assignment to make the preparation?

11 MR. TILT: I don't think so. No. Thank you.

12 THE COURT: All right.

13 Mr. Johnson, any question regarding the ruling of
14 the Court today?

15 MR. JOHNSON: No specific question on the ruling.
16 Procedurally, I don't know if the Court can offer any direction
17 on where the Court would like these legal issues to be
18 determined, in the prior action, or what we call the second
19 lawsuit in our briefing, or in a new matter, this case.
20 Where -- where does -- where does the Court want these legal
21 issues determined? Is that perhaps the subject of the
22 briefing?

23 THE COURT: And I suppose the best answer I can
24 give to that question is I can't be your attorney, counsel. I
25 have to deal with what's before me. And I can only resolve

1 disputes that are presented to me.

2 There are now two cases. Are there arguments that
3 could be raised that one should be continued and another
4 dismissed or they ought to be consolidated? Those are
5 certain -- certainly appropriate questions for legal
6 determination. But they are not before the Court today.

7 I'm not addressing motions in either of those cases
8 today, other than the question of the enforceability of the
9 writ of execution. That, I have ruled on. But I've made no
10 rulings on any other issues in other cases.

11 I've had some commentary on those cases. That's
12 intended simply to inform the parties, in an effort to avoid
13 unnecessary consumption of either legal resources or judicial
14 resources, in matters that may or may not be appropriate for
15 further consideration.

16 But the determination strategically as to how those
17 matters should proceed, or if they should proceed, has to be
18 left to counsel. And I'm not -- I'm not in a position to
19 provide legal advice on either side on those questions. And
20 that probably was an inadequate answer, but that's probably as
21 far as I can go.

22 MR. JOHNSON: Understood.

23 THE COURT: All right. Anything else, Mr. Johnson?

24 MR. JOHNSON: No, Judge.

25 THE COURT: All right. Thank you.

1 I will make one other aside. And that is, with
2 respect to Metro National Title, I don't know whether you were
3 involved at the time of the Utah Title dissolution and Metro
4 Title's acquisition of various interests, I think, that were
5 handled by Mr. Newman at that time, but that name, as it came
6 back up, just sparked several memories, as -- as I was involved
7 as the trustee in the Utah Title case. That just goes back a
8 lot of years, and it was just interesting to hear that name
9 coming back up again.

10 So anyway, thank you all very much. And I
11 appreciate the diligence and effort of the parties and the
12 presentation. Certainly these are unique issues. And as even
13 I've looked at the briefing, many of them have not been
14 definitely determined here in Utah.

15 The issue of the Supreme Court kind of established
16 new law in the State of Utah, and we are at the point of
17 addressing its impact. And certainly I appreciate the
18 excellent work of competent counsel in presenting those
19 questions.

20 So thank you. And we are in recess until the
21 Court's afternoon calendar. Thank you.

22 (Proceedings concluded.)
23
24
25


1 STATE OF UTAH)
2)
3 COUNTY OF SALT LAKE)

4 I, CECILEE WILSON, Certified Shorthand
5 Reporter for the State of Utah, certify:

6 That I received the audio recording in this
7 matter, that I transcribed it into typewriting, and that a
8 full, true, and correct transcription of said audio recording
9 so recorded and transcribed is set forth in the foregoing pages
10 inclusive, except where it is indicated that the recording was
11 inaudible.

12 I FURTHER CERTIFY that I am neither counsel
13 for nor related to any party to said action nor in anywise
14 interested in the outcome thereof.

15 Certified and dated this 17th day of February,
16 2025.

17 

18 CECILEE WILSON, CSR, RDR, CRR
19 Certified Shorthand Reporter
20 for the State of Utah
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